

RD AN No. 3455 (1940-M)
March 24, 1999

TO: Rural Development State Directors, Rural Development
Managers, and Community Development Managers

FROM: Jan E. Shadburn
Administrator
Rural Housing Service

SUBJECT: Updated Guidelines for Submitting Debarment and Suspension
Requests to the National Office

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) provides clarifications to State, area and local offices for use when a recommendation for a nonprocurement suspension and proposed debarment action is submitted to the National Office.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 3388 (1940-M)

IMPLEMENTATION RESPONSIBILITIES:

This AN clarifies certain existing regulations regarding the preparation of the debarment case file for submission to the National Office.

Due to the potentially serious consequences resulting from a suspension or debarment action and the possibility of a challenge to the Agency action, it is important that all recommendations for these actions be fully supported with documentation. If the Administrator has access to all relevant information during the decision making process and this information is contained in the appropriate files, the Agency will be more likely to withstand any challenges to its decision to impose suspension or debarment.

EXPIRATION DATE: March 31, 2000

FILING INSTRUCTIONS:
Preceding RD Instruction 1940-M

Particular attention should be paid to RD Instruction 1940-M, Exhibit A, 7 C.F.R. section 3017.305 listing causes for debarment. All recommendations must be supported with documentation justifying the request. The materials submitted to the Program Support Staff (PSS), plus documents submitted by the respondents during the administrative process will comprise part of the administrative record. The quality and accuracy of this narrative record can ultimately determine the success or failure of a case if the case is appealed to an Administrative Law Judge (ALJ).

In order for the Agency to be successful in its debarment and suspension actions, the file should be fully documented. The Agency should include all documents relating to the relationship between the debarment target and the Agency. This includes mortgages, notes, management agreements, etc. Our recent experiences suggest that we should exercise care in identifying the correct person or entity to be debarred lest we lose on procedural error of failure to provide proper and timely notice.

When the debarment may extend to partners or affiliates of any partnership agreements or articles of incorporation should be included to establish relationships between the parties. These documents also assist in correctly identifying the person or entity to be debarred, making determinations about imputing actions to other individuals, and debarring affiliates. The debarment file (a four position folder) should contain the following documentation in the following order:

P O S I T I O N 1 & 2

The National Office is Responsible for 1 & 2

P O S I T I O N 3

Documentary Evidence From The State Office in
Chronological Order With The Most Recent Documents on Top

- State Director's recommendation of action to be taken, including the recommended period for debarment, suspension or proposed debarment and transmittal to National Office.
- Regional Attorney's memorandum including their concurrence and the reasons for their concurrence in (including any problems they may foresee) the causes, i.e. specific citations under 3017.305.
- State Office request for review by Regional Attorney, including the name of all individuals and entities, current correct address for each, specific causes for debarment (see § 3017.305; subsection (d) alone is not enough) and a suggested and justified period of debarment (see § 3017.320).
- Transmittal memoranda from the Local and Area Office.
- Executive Summary, consisting of a brief history and background of events and acts that were responsible for recommending debarment.

- Clear, cogent, and concise narrative setting out each person or entity to be debarred, the specific causes for debarment, the specific actions which give rise to each specific cause for debarment, an explanation as to why and how the specific action is a cause for debarment, and any weak points or extenuating circumstances which may be involved. Specific citations to each regulation at issue must be included.
- Include any of the following documents that are applicable plus any additional information that will support the State Office's recommendation and help the Administrator in the decision making process:
 - Agency letters to the respondents and their responses
 - Borrower complaint letters to respondents and their responses
 - Copies of any articles of incorporation, loan agreements, bylaws or partnership agreements
 - Record of other Agency contacts with respondents
 - Record of visits and copies of running record entries
 - Inspections/Certifications
 - Criminal indictments, Judgments, Settlements, and Plea Bargain Agreements
- Construction Matters:
 - Contract/Agreement
 - Subcontracts
 - Amendments/Change Orders
 - Plans and Specifications
 - Warranty Documents
 - Payment Information
 - Release of Claims, Lien Waivers
 - Mechanics or Suppliers Liens/Judgments
- Application Matters:
 - Application
 - Verification of employment
 - Interest Credit Agreement
 - Conditional Commitment

POSITION 4

OIG and Other Investigation Reports

If you have any questions concerning these issues or the debarment and suspension regulations, please contact Phil Aravanis of PSS on (202) 690-4492.